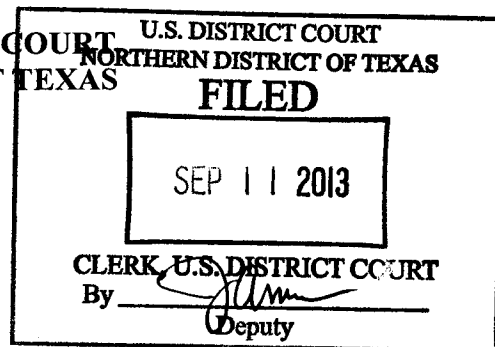


IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION



**BRIAN PARKER, MICHAEL FRANK,
and JEREMY COZART, on behalf of
themselves and other similarly situated,**

Plaintiffs,

v.

**ABC DEBT RELIEF, LTD. CO.,
THE DEBT ANSWER, LLC, LLOYD
WARD, P.C. D/B/A LLOYD WARD &
ASSOCIATES, LLOYD REGNER, and
LLOYD WARD,**

Defendants.

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CIVIL ACTION NO. 3:10-cv-1332-P

COURT'S CHARGE TO THE JURY

Now that you have heard all of the evidence, it becomes my duty to give you the instructions of the Court concerning the law applicable to this case.

It is your duty as jurors to follow the law as I shall state it to you, and to apply that law to the facts as you find them from the evidence in the case. You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole. Neither are you to be concerned with the wisdom of any rule of law stated by me.

Regardless of any opinion you may have as to what the law is or ought to be, it would be a violation of your sworn duty to base a verdict upon any view of the law other than that given in the instructions of the Court, just as it would also be a violation of your sworn duty, as judges of the facts, to base a verdict upon anything other than the evidence in the case.

In deciding the facts of this case, you must not be swayed by bias or prejudice or favor as to any party. A corporation and all other persons are equal before the law and must be treated as equals in a court of justice. Our system of law does not permit jurors to be governed by prejudice or sympathy or public opinion. Both the parties and the public expect that you will carefully and impartially consider all of the evidence in the case, follow the law as stated by the Court in these instructions, and reach a just verdict regardless of the consequences.

This case should be considered and decided by you as an action between persons of equal standing in the community, and holding the same or similar stations in life. A corporation is entitled to the same fair trial at your hands as is a private individual. The law is no respecter of persons, and all persons, including corporations, stand equal before the law and are to be dealt with as equals in a court of justice. To this end, when several corporations are joined in a lawsuit, each generally is treated separately for purposes of establishing who performed what type of conduct.

When a corporate entity is involved, of course, it may act only through natural persons as its agents or employees; and, in general, any agent or employee acting in a supervisory or managerial capacity of a corporate entity may bind that entity by his or her acts and declarations made while acting within the scope of his or her duties as an employee of that corporate entity. An "employee" is a person in the service of another with the understanding, express or implied, that such other person has the right to direct the details of the work and not merely the result sought to be accomplished. A party is an "agent" of another party if the party acts with the other party's authority. Authority for another to act for a party must arise from the party's agreement that the other act on behalf and for the benefit of the party. If a party so authorizes another to

perform an act, that other party is also authorized to do whatever else is proper, usual, and necessary to perform the act expressly authorized.

As stated earlier, it is your duty to determine the facts, and in so doing you must consider only the evidence I have admitted in the case. The term “evidence” includes the sworn testimony of the witnesses and the exhibits admitted in the record. Any evidence as to which an objection was sustained by the Court and any evidence ordered stricken by the Court, must be entirely disregarded.

Remember that any statements, objections or arguments made by the lawyers are not evidence in the case. The function of the lawyers is to point out those things that are most significant or most helpful to their side of the case, and in so doing, to call your attention to certain facts or inferences that might otherwise escape your notice. In the final analysis, however, it is your own recollection and interpretation of the evidence that controls in the case. What the lawyers say is not binding upon you.

Generally speaking, there are two types of evidence that a jury may consider in properly finding the truth as to the facts in this case. One is “direct” evidence—such as testimony of an eyewitness. The other is “indirect” or “circumstantial” evidence—the proof of a chain of circumstances that points to the existence or nonexistence of certain facts. As a general rule, the law makes no distinction between direct and circumstantial evidence, but simply requires that the jury find the facts from a preponderance of all the evidence, both direct and circumstantial.

So, while you should consider only the evidence in the case, you are permitted to draw such reasonable inferences from the testimony and exhibits as you feel are justified in the light of common experience. In other words, you may make deductions and reach conclusions that

reason and common sense lead you to draw from the facts that have been established by the testimony and evidence in the case.

Now, I have said that you must consider all of the evidence. Nevertheless, this does not mean that you must accept all of the evidence as true or accurate. You are the sole judges of the credibility or “believability” of each witness and the weight to be given to his or her testimony. In weighing the testimony of a witness, you should consider his or her relationship to Plaintiffs or to Defendants; his or her interest, if any, in the outcome of the case; his or her manner of testifying; his or her opportunity to observe or acquire knowledge concerning the facts about which he or she testified; his or her candor, fairness and intelligence; and the extent to which he or she has been supported or contradicted by other credible evidence. You may, in short, accept or reject the testimony of any witness in whole or in part.

Also, the weight of the evidence is not necessarily determined by the number of witnesses testifying as to the existence or nonexistence of any fact. You may find that the testimony of a smaller number of witnesses as to any fact is more credible than the testimony of a larger number of witnesses to the contrary.

During the trial of this case, certain testimony has been read to you by way of depositions, consisting of sworn answers to questions asked of the witnesses in advance of trial. Such testimony is entitled to the same consideration and is to be judged as to credibility, and weighed, and otherwise considered by the jury in the same way, insofar as possible, as if the witness had been present and had given from the witness stand the same testimony as given in the deposition.

I will instruct you as to which party has the burden of proof on each essential element of

its claim or defense in the case. The party having the burden of proof on each issue of fact must prove that fact by a “preponderance of the evidence.” A preponderance of the evidence means such evidence as, when considered and compared with that opposed to it, has more convincing force and produces in your minds a belief that what is sought to be proved is more likely true than not true. In other words, to establish a claim by preponderance of the evidence merely means to prove that the claim is more likely so than not so.

In determining whether any fact in issue has been proved by a preponderance of the evidence, you the jury may consider the testimony of all the witnesses, regardless of who may have called them, and all the exhibits received in evidence, regardless of who may have introduced them. If the proof should fail to establish any essential element of a party’s cause of action or defense, the jury should find for the other party as to that cause of action or defense.

A witness may be “impeached” or discredited by contradictory evidence, by a showing that he or she testified falsely concerning a material matter, or by evidence that at some other time he or she said or did something, or failed to say or do something, which is inconsistent with the witness’ present testimony. If you believe that any witness has been so impeached, it is in your exclusive province to give the testimony of that witness such credibility or weight, if any, as you think it deserves.

In answering the questions which I will submit to you, answer “yes” or “no” unless otherwise instructed. A “yes” answer must be based on a preponderance of the evidence, unless otherwise instructed. If you do not find that a preponderance of the evidence supports a “yes” answer, then answer “no.”

After I have completed reading these instructions and reviewing the verdict form and jury questions with you, counsel will have the opportunity to make their closing arguments.

Your verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that all members of the jury agree to it. You therefore may not enter into an agreement to be bound by a majority or any vote other than a unanimous one.


Remember at all times that you are not partisans. Rather, you are judges—judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

Upon retiring to the jury room, you should first select one juror to act as your presiding officer who will preside over your deliberations and will be your spokesperson here in Court. A verdict form has been prepared for your convenience. Your presiding officer will sign in the space provided below after you have reached your verdict.

If, during your deliberations, you wish to communicate with the Court, you should do so only in writing by a note handed to the Deputy Marshal and signed by the presiding officer. During your deliberations, you will set your own work schedule, deciding for yourselves when and how frequently you wish to recess and for how long.

After you have reached your verdict, you will return these instructions together with your written answers to the questions that I will submit to you. Do not reveal your answers until such time as you are discharged, unless otherwise directed by me.

Date: September 11, 2013.



JORGE A. SOLIS
UNITED STATES DISTRICT JUDGE

FAIR LABOR STANDARDS ACT

The Fair Labor Standards Act is a federal law requiring the payment of overtime pay for hours worked over 40 hours in a given week. In this case, the Court has determined that Plaintiffs are entitled to overtime pay for any hours worked in excess of 40 hours per week while employed by the Defendants. It is for you, the jury, to decide whether each Plaintiff has proven that s/he worked in excess of 40 hours per week for which s/he was not paid while employed by the Defendants, and, if so, to determine the overtime compensation due to each Plaintiff.

UNCOMPENSATED OVERTIME

The phrase “hours worked” includes all time spend by an employee that was primarily for the benefit of the employer or the employer’s business. Such time constitutes “hours worked” if the employer knew or should have known that the work was being performed.

Periods during which an employee is completely relieved of duty that are long enough to enable the employee to use the time effectively for his own purposes and are not “hours worked.” Rest periods of short duration, running from 5 minutes to about 20 minutes, are common in industry. They promote the efficiency of the employee and are customarily paid for as working time. They must be counted as hours worked. Compensable time of rest periods may not be offset against other working time such as compensable waiting time or on-call time

Lunch time is generally not compensable unless it is spent working for the employer.

QUESTION NO. 1

Did Plaintiffs work overtime hours for which they were not compensated while employed by Defendants?

Answer "Yes" or "No"

Answer: Yes

If you answered Question No. 1 "Yes," then answer the following question. If you answered Question No. 1 "No," then do not answer the following question and proceed to the verdict page.

WILLFULNESS

If any Plaintiff proves by a preponderance of the evidence that s/he worked overtime hours for which s/he was not compensated, you must determine whether the Defendants willfully violated the Fair Labor Standards Act (FLSA). You should not interpret the fact that I have given instructions about willful violation as an indication in any way that I believe that Defendants did, or did not, fail to compensate for overtime work or engage in a willful violation of the FLSA. It is your task first to decide whether any Plaintiff was not compensated. I am instructing you on willfulness only so that you will have guidance in the event you decide that Defendants failed to compensate a Plaintiff for overtime hours.

If you find that the Defendants violated the FLSA by failing to pay overtime compensation, then you must also determine whether Defendants' action was willful. To establish willfulness, Plaintiffs must prove by a preponderance of the evidence that, when Defendants failed to pay overtime compensation, Defendants either

- (1) knew that their conduct violated the FLSA; or
- (2) acted with reckless disregard for whether or not they were in compliance with the FLSA.

An employer commits a willful violation by disregarding the possibility that it is violating the FLSA or if it is evidently indifferent to the FLSA's requirements. An employer shows reckless disregard for the requirements of the FLSA when it fails to make adequate inquiry into whether its conduct is in compliance with the FLSA.

QUESTION NO. 2

In failing to pay overtime compensation, did any of the following Defendants willfully violate the Fair Labor Standards Act?

Answer "Yes" or "No" for each Defendant.

ABC Debt Relief Ltd. Co.: Yes

The Debt Answer: Yes

Lloyd Regner: No

Lloyd Ward, P.C.: Yes

Lloyd Ward: Yes

Proceed to the following question.

GOOD FAITH

If you find that the Defendants violated the Fair Labor Standards Act ("FLSA"), you must also determine whether or not they did so in good faith and whether or not they had

reasonable grounds for believing that their actions or omissions were not violations of the FLSA.

The Defendants must prove that they had both:

- (1) A subjective good faith belief that they were in compliance with the FLSA, and
- (2) An objectively reasonable basis for believing they were in compliance with the FLSA.

The Defendants' burden to prove both of these elements is substantial. In order to meet their substantial burden to show that they had subjective good faith in failing to pay Plaintiffs their overtime compensation, Defendants must show that they took affirmative steps to investigate whether the payment scheme complied with the FLSA.

In order to meet their substantial burden to show objective reasonableness, Defendants must prove that they operated under a mistaken, although reasonable, belief that their acts were in conformity with the law. They may not rely on their ignorance of the law.

QUESTION NO. 3

In failing to pay overtime compensation, did the following Defendants act with a subjective good faith belief that they were in compliance with the FLSA?

Answer "Yes" or "No" for each Defendant.

ABC Debt Relief Ltd. Co.: No

The Debt Answer: No

Lloyd Regner: Yes

Lloyd Ward, P.C.: No

Lloyd Ward: No

In failing to pay overtime compensation, did the following Defendants act with an objectively reasonable basis for believing they were in compliance with the FLSA?

Answer "Yes" or "No" for each Defendant.

ABC Debt Relief Ltd. Co.: No

The Debt Answer: No

Lloyd Regner: Yes

Lloyd Ward, P.C.: No

Lloyd Ward: No

Proceed to the following question.

DAMAGES

If any Plaintiff proves by a preponderance of the evidence that s/he worked overtime hours for which s/he was not compensated, you must determine the amount of compensation to which the Plaintiff is entitled. You should not interpret the fact that I have given instructions about overtime wages due as an indication in any way that I believe that Defendants owe, or do not owe, overtime wages to Plaintiffs. It is your task to decide the overtime compensation owed to each Plaintiff, if any.

The measure of actual damages is the difference between what Defendants should have paid the Plaintiff under the Fair Labor Standards Act and the amount you find the Defendants actually paid. Therefore, you should not include overtime hours for which Plaintiffs have been compensated, if any.

For employees paid on an hourly basis or salary basis, employers must pay the employees at least one and one-half times their regular rate for overtime work. The regular rate of

employees paid on an hourly basis or salary basis is determined by dividing the first 40 hours worked in a week into the total wages paid for those 40 hours. The overtime rate, then, is one and one-half times that rate for every hour worked in excess of 40 hours in a workweek.

For employees paid on a commission basis, employers must pay the employees at least one-half (*not* one and one-half) times their regular rate. Because the Defendants did not keep accurate records of the Plaintiffs' time and compensation and because it is not possible or practicable to allocate the commission among the workweeks of the period in proportion to the amount of commission actually earned, you may calculate the regular rate of an employee paid on a commission basis by dividing the total hours worked in a given year into the total wages paid for that year. The overtime rate, then, is one-half (*not* one and one-half) times that rate.

You must determine the number of uncompensated overtime hours worked by Plaintiffs based on all the evidence. Under the Fair Labor Standards Act, employers must keep accurate records of the hours worked by all employees. Employees are not required to keep such records. Because Defendants failed to maintain accurate records of all Plaintiffs hours, each Plaintiff may estimate the number of hours s/he worked; the estimation needs only be approximate, not exact or precise. You may accept each Plaintiff's estimation, unless you find that the estimation is unreasonable, based on all the evidence. The Defendant has the burden to prove that the Plaintiff's estimation is unreasonable.

QUESTION NO. 4

How much overtime compensation, if any, is owed to each Plaintiff for uncompensated overtime work performed while employed by Defendants?

For each Plaintiff, state the amount of unpaid overtime compensation owed by Defendants. If you find that no unpaid overtime compensation is owed to a Plaintiff, state the amount of overtime compensation owed as "0."

<u>Employee</u>	<u>Overtime Compensation Owed</u>
Dana Block	\$ 15,228.02
Greg Burk	\$ 2,375.10
Jessica Casey	\$ 10,519.13
Victoria Castillo	\$ 642.70
Jeremy Cozart	\$ 2,273.19
Michael Frank	\$ 8,581.15
Johnny Keel	\$ 8,144.24
Vallery Mann	\$ 4,554.45
Jo Minaya	\$ 33,594.69
Brian Parker	\$ 15,125.35
Christopher Pitre	\$ 23,902.63

If you determined in Question No. 2 that Defendants did *not* willfully violate the Fair Labor Standards Act, please determine the amount of overtime compensation owed to the specified Plaintiffs as instructed in Question No. 4A.

If you determined in Question No. 2 that Defendants *did* willfully violate the Fair Labor Standards Act, please determine the amount of overtime compensation owed to the specified Plaintiffs as instructed in Question No. 4B.

QUESTION NO. 4A

If you determined in Question No. 2 that Defendants did *not* willfully violate the Fair Labor Standards Act, the following Plaintiffs are entitled to unpaid overtime compensation accrued from the date listed in column two. You are not to award Plaintiffs unpaid overtime compensation, if any, accrued before the date listed in column two.

<u>Employee</u>	<u>Date from which overtime compensation owed should be calculated</u>	<u>Overtime Compensation Owed</u>
Tim Carr	2/13/2010	\$ 27,936.03
Coddi Dean	2/7/2010	\$ 3702.58
John Nelson	11/18/2009	\$ 8726.59

QUESTION NO. 4B

If you determined in Question No. 2 that Defendants *did* willfully violate the Fair Labor Standards Act, the following Plaintiffs are entitled to unpaid overtime compensation accrued from the date listed in column two. You are not to award Plaintiffs unpaid overtime compensation, if any, accrued before the date listed in column two.

<u>Employee</u>	<u>Date from which overtime compensation owed should be calculated</u>	<u>Overtime Compensation Owed</u>
Tim Carr	2/13/2009	\$ 30,863.53
Coddi Dean	2/7/2009	\$ 18,626.93
John Nelson	11/18/2008	\$ 8,815.39

VERDICT CERTIFICATION

We, the jury, have answered the above and foregoing questions as herein indicated, and herewith return same into court as our verdict.

DATE: 9-11-13 BY: Dorothy Tomlinson

PRESIDING OFFICER OF THE JURY